HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition Nos.19036 of 1997, 19441 of 2000, 4724, 13397, 17901, 19765, 19770 of 2001, 4410, 6009, 14563, 17499, of 2002, 8120, 11169, 12112 of 2004, And 4505, 6968 of 2005

Writ Petition No.19036 of 1997

Between:

B. Thomas

… Petitioner

And

The Divisional Electrical Engineer,
APSEB, Operation- Town, PWD Grounds,
Vijayawada and others.

… Respondents

:: ORDER::

Counsel for Petitioners: Sri P.V. Ramana,

Counsel for the Respondents: Sri G. Vidyasagar in all the writ petitions except in W.P.No.6009 of 2002.

Smt.E. Urmila in W.P.No.6009 of 2002.

October 11, 2006

Whether the employees of Andhra Pradesh State Electricity Board (for short, 'the Board'), other than Class IV employees, who fall within the definition of 'workman' under Section 2 (s) of the Industrial

Disputes Act, 1947 (for short, 'the 1947 Act') are entitled to continue in service up to the age of 60 years is the common question of law which arises for determination in these petitions filed under Article 226 of the Constitution of India for quashing the action taken by the competent authorities of the Board to retire the petitioners on attaining the age of 58 years.

For the sake of convenience, I have taken the facts from the record of Writ Petition No.19036 of 1997.

Petitioner – B. Thomas, whose date of birth is 11-8-1939, joined the service of the Board as Helper on 21-3-1959. He was promoted as Assistant Fitter in the year 1964 and as Fitter Grade-I in 1970. Vide Memo No.DEE/O/T/Estt.U1/DNo.129/95 dated 9-1-1996, Divisional Electrical Engineer (Operation), Vijayawada declared that the petitioner and 18 other employees will attain the age of superannuation and retire from service on the dates noted against their names. The date of the petitioner's retirement was shown as 31-8-1997.

The petitioner has questioned the aforementioned memo by asserting that his retirement at the age of 58 years is arbitrary, discriminatory and violative of his fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. He has averred that the Andhra Pradesh State Electricity Board Service Regulations Part I, II and III, which were framed by the Board in exercise of its power under Section 79 (c) of the Electricity (Supply) Act, 1948 (for short, 'the 1948 Act') and which were published in the Official Gazette dated 4-3-1970, are not applicable to the employees of his category who are workmen and belong to Operation Subordinate Services. He has further averred that the Board has not framed regulations for the workmen employees and, therefore, he could not be retired by invoking Clause 16 of Part I of the Regulations. He has then relied

on the provisions contained in the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short, 'the 1984 Act') and averred that the employees like him are entitled to continue in service up to the age of 60 years. It is also the petitioner's case that the workmen employees of the Board are entitled to be treated at par with similarly situated employees of the State Government, who are retired at the age of 60 years. Another plea taken by the petitioner is that service conditions of the workmen employees cannot be changed without complying Section 9-A of the 1947 Act.

During the pendency of the writ petition, the petitioner filed WPMP No.24460 of 2006 for grant of permission to file common consolidated material papers. The same was allowed on 22-9-2006 and the affidavit of the petitioner filed along with some documents was taken on record.

In the counter-affidavit filed on behalf of the respondents by Smt.S. Shobha Rani, Assistant Secretary (Legal), A.P. Transco, it has been averred that all the employees of the Board, including those covered by the definition of 'workman' under Section 2 (s) of the 1947 Act are governed by the Regulations framed under Section 79 (c) of the 1948 Act. She has further averred that in terms of Clause 16 (1) of Part I of the Regulations, the employees of the Board other than Class IV employees superannuate at the age of 58 years and Class IV employees retire on attaining the age of 60 years. The deponent has then averred that only the employees of the erstwhile Hyderabad Electricity Department were allowed to continue up to the age of 60 years because their age of retirement under the erstwhile establishment was 60 years and in view of the provisions contained in the States Re-organisation Act, 1956, their service conditions could not have

been changed to their disadvantage.

In other petitions, the petitioners who retired from service as Assistant Lineman, Lineman, Foreman, Foreman Grade-II, Foreman Grade-I, Line Inspector, Senior Line Inspector, Store Keeper, Lower Division Clerk, Upper Division Clerk etc. have prayed for quashing the Memos/Orders issued by the competent authorities seeking to retire them at the age of 58 years. The grounds on which other petitioners have challenged their retirement are more or less similar to those taken in Writ Petition No.19036 of 1997.

Shri P.V. Ramana, learned counsel for the petitioners argued that Clause 16 (1) of Part I of the Regulations framed by the Board under Section 79 (c) of the 1948 Act is not applicable to the petitioners who fall within the definition of 'workman' under Section 2 (s) of the 1947 Act and, therefore, their retirement at the age of 58 years is liable to be declared illegal. Shri Ramana emphasized that the employees who fall within the definition of 'workman' have not been classified in any of the categories specified in the schedule appended to the Regulations and argued that they cannot be treated at par with other employees of the Board and retired at the age of 58 years. He referred to sub-clause (2) of Clause 16 of the Regulations to show that the Board has designedly made a distinction between the workmen and non-workmen employees and argued that the petitioners could not have been retired by invoking Clause 16 (1) of the Regulations. Shri Ramana submitted that the employees working in the Operation Subordinate Services are not governed by the Regulations framed under Section 79 (c) of the 1948 Act and, therefore, they are entitled to continue up to the age of 60 years at par with the workmen employees of the State Government. To buttress this argument, learned counsel relied on order dated 8-4-1959 passed by the Chairman of the Board and B.P.Ms.No.747 dated 19-

11-1974 issued by the Secretary of the Board. Shri Ramana then relied on Memo No.DM (IR) PO-2-2/453/88-4 dated 4-11-1988 and Memo No.DM (IR) / PO.2/453/88-5 dated 24-11-1988 issued by the Member Secretary and Director (Personnel) of the Board and submitted that the petitioners are entitled to continue in service up to the age of 60 years. In support of his arguments, Shri P.V. Ramana relied on the judgments of this Court in **Chitti Babu v. State of A.P.**[1] and **Union of India, Dept. of Automic Energy v. G.P.M. Rao**[2].

Shri G. Vidyasagar and Smt.E. Urmila argued that the Regulations framed by the Board under Section 79 (c) of the 1948 Act do not make any distinction between the workmen employees and the non-workmen employees and the age of retirement of all categories of employees is regulated by Clause 16 of the Regulations. Learned counsel further argued that the petitioners cannot take advantage of any administrative decision or executive instruction issued by the State Government or the Board prior to 4-3-1970 i.e. the day on which Regulations framed under Section 79 (c) of the 1948 Act were notified and their service conditions are liable to be regulated by the statutory regulations. Shri Vidyasagar submitted that the policy contained in Memos dated 4-11-1988 and 24-11-1988 is applicable only to ex-Hyderabad State employees and as the petitioners do not belong to that category, they cannot take benefit of the policy. He further submitted that classification of certain categories of staff of the Board as workmen made vide order dated 19-11-1974 and clarification given vide B.P.Ms.No.625 dated 12-7-1983 does not have any bearing on the petitioners' retirement on superannuation, which is governed by Part I of the Regulations.

I have thoughtfully considered the entire matter. There is no dispute between the parties that the Board was constituted under

Section 5 of the 1948 Act. Section 79 of that Act empowers the Board to make regulations on various matters enumerated in clauses (a) to (j). Clause (c) of Section 79, which is relevant for deciding these cases, reads as under:

"**Section 79 (c) of the 1948 Act**

79. Power to make regulations:

[The Board may, by notification in the Official Gazette, make regulations] not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely--

…

(c) the duties of [officers and other employees] of the Board, and their salaries, allowances and other conditions of service;

…"

In exercise of power vested in it under the above reproduced section, the Board framed the Regulations which, as mentioned above, were published in the Official Gazette dated 4-3-1970. Clauses 2 and 16 of Part I of the Regulations read as under:

"**Clauses 2 and 16 of Part I of Board Service Regulations:**

2. Except where it is otherwise expressed or implied, these regulations with such amendments as may be effected by the Board from time to time shall apply to the monthly paid (on time-scale of pay) employees of the Government of Andhra Pradesh who have opted for service under the Board and to the monthly paid employees recruited on and after 1-4-1959.

Provided that employees of the Government of Andhra Pradesh whose services have been transferred to the Board shall have the option to be governed by the rules governing the conditions of service applicable to them under the government as on the date prior to the date of their transfer. Such option shall be exercised within such time as may be prescribed by the Board.

16. (a) Age of Retirement:-

1) The date of retirement on super-annuation of an employee of the Board other than Class-IV employee is the date on which he attains the age of 58 years and

of a Class-IV employee the date on which he attains 60 years.

2) Non-workmen who had attained 55 years of age on any day after August 2nd, 1984 will not retire on August 31st, 1984 but will continue in service till they attain the prescribed superannuation age of 58 years.

(b) An employee under suspension on a charge of misconduct should not be required or permitted to retire on his reaching the date of compulsory retirement, but should be retained in service until the enquiry into the charge is concluded and final order passed thereon by the competent authority.

(c) Whether an employee referred to in clause (b) above is fully exonerated or not, shall be considered to have been on extension of service for the period from the date of Compulsory retirement to the date of termination of the proceedings.

Note: When an employee is required to retire, revert or ceases to be on leave, on attaining a specified age, the day on which he attains that age is reckoned as a non-working day and the employee must retire, revert or cease to be on leave (as the case may be) with effect from and including that day."

A conjoint reading of the above reproduced clauses of the Regulations makes it clear that the provisions contained in Part I of the Regulations are applicable to all monthly paid (regular time scale) employees of the Government of Andhra Pradesh who opted for the services of the Board and those who were recruited in the services of the Board on or after 1-4-1959. This means that Clause 16 of Part I of the Regulations, which govern the age of retirement, is applicable to all the employees. The only exception contained in sub-clause (1) of Clause 16 relates to Class IV employees, whose age of

superannuation has been fixed as 60 years. Sub-clause (2) of Clause 16 relates to non-workmen employees who attained the age of 55 years after August 02, 1984. It declares that those employees will not retire on August 31, 1984, but will continue in service up to the age of 58 years. This sub-clause appears to have been subsequently added in the backdrop of the vacillating decisions taken by the State Government in 1984, first to reduce the age of retirement of the employees from 58 years to 55 years and then restore the status quo ante. However, the same does not have any bearing on the petitioners' case, who are governed by Clause 16 (1) of the Regulations.

The argument of Shri P.V. Ramana that the provisions contained in Part I of the Regulations are not applicable to the employees who fall in the category of workmen is not supported by the plain language of the Regulations and I do not see any reason to interpret the Regulations in a manner which would amount to re-writing of Clauses 2 and 16 thereof. The power to legislate is the exclusive prerogative of the competent legislature. Likewise, the power to enact subordinate legislation or make delegated legislation is the exclusive preserve on the authority upon whom such power is conferred by the competent legislature. Therefore, it is not open to or permissible for this Court to use the power of judicial review for the purpose of legislation. Any such attempt would amount to unwarranted encroachment on the jurisdiction of the legislature or the authority upon whom power is conferred to make subordinate/delegated legislation.

There is another reason for not accepting the plea of the petitioners that being members of Operation Subordinate Services and workmen, they are entitled to continue in service up to the age of 60 years. A number of other employees who are not members of

Operation Subordinate Services and who have been categorized in the Schedules appended to the Regulations also fall in the definition of 'workman'. There is no dispute that such employees are governed by Clause 16 of the Regulations. If the plea of the petitioners is accepted, then it would lead to incongruous and anomalous results inasmuch as there will be two classes among the employees who fall within the definition of 'workman'. Therefore, keeping in view the settled law that the Court should avoid interpretation of a statute which leads to anomalous results or creates discrimination among similarly situated persons, I have no hesitation to reject this contention of the petitioners.

The plea of the petitioners that they are entitled to be treated at par with the employees of the government, who fall within the definition of 'workman' under Section 2 (s) of the 1947 Act and the failure of the Board to continue them in service up to the age of 60 years has resulted in discrimination and violation of their fundamental right to equality is wholly misconceived and is liable to be rejected. In the first place, it is to be noted that the petitioners have not produced any material to show that all government employees who fall within the definition of 'workman' retire at the age of 60 years. Secondly, even if that be so, the petitioners cannot claim parity with the government employees because the two sets of employees are employed under different employers and their service conditions are regulated by different sets of statutory provisions. While the government employees hold civil posts under the State and their conditions of service are regulated by the law enacted by the competent legislature or the rules framed under proviso to Article 309 of the Constitution, the employees of the Board do not hold civil posts and their service conditions are governed by the Regulations framed under Section 79 (c) of the 1948 Act, which are in the nature of

subordinate legislation.

The provisions contained in the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short, 'the 1984 Act') to which reference has been made in the affidavit of the petitioner – B. Thomas in support of his claim for being continued in service up to the age of 60 years are not available to the petitioners because the same are applicable only to government employees and not to the employees of the Board whose service conditions are governed by the Regulations framed under Section 79 (c) of the 1948 Act.

The judgments on which reliance has been placed by Shri P.V. Ramana do not have any bearing on the petitioners' case. In **Chitti Babu v. State of A.P.** (supra), the learned Single Judge held that the workmen of Public Works Division, Sithanagaram, P.W. Workshops Sub-division, Dhavaleswaram, PWD Workshops, Regional Work Shops and Machinery Division, Hyderabad and Nagarjuna Sagar Left Canal Circle at Miriyalguda are entitled to continue in service till they attain the age of 60 years. In **Union of India, Dept. of Automic Energy v. G.P.M. Rao** (supra), the Division Bench held that the drivers working in Nuclear Fuel Complex are workmen within the meaning of clause (b) of FR 56 and they are entitled to retire on attaining the age of 60 years. Since the petitioners of those cases were not employed in the services of the Board, the ratio of those decisions cannot be applied to the cases of the petitioners whose service conditions are regulated by the regulations framed under Section 79(c) of the 1948 Act.

No other point has been argued.

In the result, the writ petitions are dismissed.

As a sequel to dismissal of the writ petitions, all the miscellaneous petitions shall also stand dismissed.

G.S. SINGHVI, CJ

October 11, 2006

svs

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[1] 1985 (1) ALT 520

[2] 1998 (3) ALD 433 (DB)